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# Honey, It's All the Buzz: Regulating Neighborhood Beehives

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# HONEY, IT'S ALL THE BUZZ: REGULATING NEIGHBORHOOD BEEHIVES

PATRICIA E. SALKIN\*

**Abstract:** Beekeeping's popularity has surged in recent years, perhaps culminating in the introduction of the first ever White House bee hive. Local apiaries provide a wide variety of benefits to communities, ranging from pollination services for gardens to producing honey that can be used in a wide array of foods and products. Apiaries are not always welcome in a community, however, perhaps because of their potential to cause a nuisance, or to harm crops or people. Although beekeeping regulation implicates both state and federal concerns, a number of localities have developed unique and practical regulations that promote backyard beekeeping, while maximizing its benefits and minimizing its potential harm. This Article examines those regulations with the hope of aiding land use regulators in developing strategies to promote beekeeping activities.

## INTRODUCTION

Urban beekeeping, along with other types of sustainable development and green building, has generated quite a buzz in recent years. Since 2009, the White House has maintained a hive of 70,000 bees that produce honey for the presidential kitchen and pollinate the vegetables in First Lady Michelle Obama's kitchen garden.<sup>1</sup> Chicago has its own city-managed apiaries at City Hall, in both city zoos, and in the Garfield Park Conservatory.<sup>2</sup> Other cities across the country, including New

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<sup>1</sup> *Inside the White House - Bees!*, WHITE HOUSE, (June 23, 2010), <http://www.whitehouse.gov/photos-and-video/video/2010/06/23/inside-white-house-bees> (providing a video on the first White House beehive). The White House even used honey from the beehive to make the first batch of homemade White House beer. Patrick Gavin, *Obama White House to Brew More Beer*, POLITICO (Mar. 2, 2011, 2:49 PM), [http://www.politico.com/click/stories/1103/obama\\_w\\_h\\_to\\_brew\\_more\\_beer.html](http://www.politico.com/click/stories/1103/obama_w_h_to_brew_more_beer.html).

<sup>2</sup> Josh Mogerman, *What's the Latest Buzz on the Beekeeping Trend?*, CHICAGOIST (July 31, 2011, 3:00 PM), [http://chicagoist.com/2011/07/31/hipsters\\_swarm\\_to\\_beekeeping.php](http://chicagoist.com/2011/07/31/hipsters_swarm_to_beekeeping.php).

York, Denver, Milwaukee, and Santa Monica, have recently legalized beekeeping.<sup>3</sup>

Small-scale beekeeping has proven to be especially popular among people looking to obtain more of their food from local sources.<sup>4</sup> Urban bees provide important pollination services to community gardens, home vegetable gardens, and fruit trees.<sup>5</sup> Some people also believe that honey contributes to a healthy lifestyle by providing a minimally-processed sweetener as an alternative to highly manufactured sugar products, such as high-fructose corn syrup,<sup>6</sup> and through its various uses as a homeopathic remedy.<sup>7</sup> Additionally, urban beekeeping may help offset the huge losses that commercial bee populations have suffered since the emergence of colony collapse disorder in 2006.<sup>8</sup>

Small-scale beekeeping bolsters local economies, too. Restaurants benefit by being able to purchase local honey for dishes and cocktails.<sup>9</sup>

<sup>3</sup> Carla K. Johnson, *Amid Bee Die-off, Healthy Hives Thrive in Cities*, NEWSVINE (July 29, 2011, 5:02 AM), [http://www.newsvine.com/\\_news/2011/07/29/7194214-amid-bee-die-off-healthy-hives-thrive-in-cities](http://www.newsvine.com/_news/2011/07/29/7194214-amid-bee-die-off-healthy-hives-thrive-in-cities).

<sup>4</sup> See, e.g., Tom Barlow, *Urban Beekeeping a Honey of a Movement*, FORBES (May 13, 2011, 11:34 AM), <http://blogs.forbes.com/tombarlow/2011/05/13/urban-beekeeping-a-honey-of-a-movement>; Doug Fraser, *Cape Codders Abuzz on Beekeeping*, CAPE COD TIMES (June 9, 2011), <http://www.capecodonline.com/apps/pbcs.dll/article?AID=/20110609/NEWS/106090322/-1/NEWSMAP>; Jaime Gross, *That Buzzing Could Sweeten Tomorrow's Tea*, N.Y. TIMES (Mar. 26, 2010), <http://www.nytimes.com/2010/03/26/dining/26sfedine.html>; Mina Williams, *Farmer in the Town*, WEEKLY HERALD (Everett, Wash.) (May 25, 2011), <http://heraldnet.com/article/20110525/TWH01/705259961/-1/NEWS>.

<sup>5</sup> See Gross, *supra* note 4; Williams, *supra* note 4.

<sup>6</sup> See, e.g., Gary Taubes, *Is Sugar Toxic?*, N.Y. TIMES MAG. (Apr. 13, 2011), <http://www.nytimes.com/2011/04/17/magazine/mag-17Sugar-t.html?pagewanted=all> (Despite the chemical similarities of different types of sugar-based sweeteners, "high-fructose corn syrup has indeed become 'the flashpoint of everybody's distrust of processed foods'"—quoting New York University nutritionist Marion Nestle—and that "refined sugar is making a commercial comeback as the supposedly healthful alternative to this noxious corn-syrup stuff.").

<sup>7</sup> See, e.g., P.C. Molan, *The Role of Honey in the Management of Wounds*, 8 J. WOUND CARE 415, 415–16 (1999) (examining the antibacterial, antioxidant, and anti-inflammatory properties of honey); Kim Mulford, *Jury's Out on Honey's Health Benefits, but Buzz Grows*, DAILY COMET (Lafourche Parish, La.) (Mar. 28, 2011), <http://www.dailycomet.com/article/20110328/WIRE/110329471> (Although medical groups have not recognized apitherapy as a medical treatment, "the buzz about the benefits of the honeybee has been growing, from slurping down honey as a remedy for allergies and colds to injecting bee venom as a treatment for multiple sclerosis and arthritis.").

<sup>8</sup> See KEVIN HACKETT, JEFF PETTIS & DOUG HOLY, USDA POLLINATOR EFFORTS UNDERWAY AND AN UPDATE ON CCD, [http://www.usda.gov/oc/forum/2009\\_Speeches/Presentations/Hackett.pdf](http://www.usda.gov/oc/forum/2009_Speeches/Presentations/Hackett.pdf) (last visited Dec. 19, 2011) (providing a Powerpoint presentation delivered on Feb. 26, 2009 during the USDA Agricultural Outlook Forum); Johnson, *supra* note 3.

<sup>9</sup> See, e.g., Emily DeNitto, *Locally Grown Food, From Backyard Hive*, N.Y. TIMES, July 31, 2011, at WE10 (noting that one local beekeeper's honey "will be used in their restaurants in such diverse products as vinaigrettes, gelato and pizza dough").

Further, retail stores are provided with high quality artisanal honeys and beeswax-derived products such as candles, soaps, and cosmetics.<sup>10</sup> Other products, such as pollen, propolis, and royal jelly, can also be harvested and produced from bees and sold as natural remedies or health supplements.<sup>11</sup> The popularity of apiculture and bee products has even led to the establishment of bee-themed festivals and tourism events in some communities,<sup>12</sup> as well as beekeeping and honey-processing classes.<sup>13</sup>

Despite the benefits and growing popularity of backyard beekeeping, apiaries are not always welcomed by the neighbors. This Article is designed to provide information to land use regulators about the benefits and drawbacks of beekeeping in residential areas, and to offer

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<sup>10</sup> See, e.g., Sean Conway, *The Buzz on Beeswax*, CHI. TRIB., May 10, 2010, at 19; Lindsay Betz, *Solon Family All Abuzz About Beekeeping; Honey, Beeswax Turned into Natural Body Products*, SUN NEWS (Cleveland, Ohio) (Apr. 24, 2010), [http://www.cleveland.com/chagrinsolonsun/index.ssf/2010/04/solon\\_family\\_all\\_abuzz\\_about\\_b.html](http://www.cleveland.com/chagrinsolonsun/index.ssf/2010/04/solon_family_all_abuzz_about_b.html).

<sup>11</sup> See, e.g., NICOLA BRADBPEAR, FOOD & AGRIC. ORG. OF THE U.N., BEEKEEPING AND SUSTAINABLE LIVELIHOODS 25 (2003), available at <ftp://ftp.fao.org/docrep/fao/006/y5110e/y5110e00.pdf>; Laurie Savage, *The Naked Bee*, FREDERICK NEWS-POST (Md.) (Dec. 15, 2008), [http://www.fredericknewspost.com/sections/art\\_life/display.htm?storyID=83974](http://www.fredericknewspost.com/sections/art_life/display.htm?storyID=83974) (discussing a local beekeeping business that sells products such as personal care items, flavored honey, pollen, propolis salve for small cuts, bottled propolis, and a mix of raw honey, royal jelly, pollen, and propolis that can be taken during cold season with lemon juice or tea); Candelora Versace, *One Local Beekeeper's Buzz on Bees, Hives and Colony Collapse Disorder*, NEW MEXICAN (June 1, 2011), <http://www.santafenewmexican.com/food/Homegrown-Buckin-Bee-Honey-amp-amp-candles-Busy-as-a-bee> (profiling a local beekeeper who produces honey, beeswax candles, propolis tincture, and bee pollen).

<sup>12</sup> See, e.g., Guy Busby, *Saturday's Honeybee Festival Benefits Robertsedale Volunteer Fire Department*, PRESS REG. (Baldwin Cnty., Ala.) (Oct. 1, 2010, 9:46 AM), [http://blog.al.com/live/2010/10/honeybee\\_festival\\_set\\_saturday.html](http://blog.al.com/live/2010/10/honeybee_festival_set_saturday.html); Lynn Jusinski, *New Phoenixville Festival to Create Buzz for Honeybees*, PHOENIXVILLE PATCH (Pa.) (Feb. 22, 2011), <http://phoenixville.patch.com/articles/new-phoenixville-festival-hopes-to-create-buzz-for-honeybees>; Nick Lypaczewski, *All Abuzz at Area Bee Olympics*, ST. THOMAS TIMES-J. (Ont., Can.), <http://www.stthomastimesjournal.com/ArticleDisplay.aspx?e=3235043> (last visited Dec. 19, 2011); Johnna Pinholster, *Hahira Honey Bee Festival Attracts Swarms of People*, VALDOSTA DAILY TIMES (Ga.) (Oct. 9, 2010), <http://valdostadailytimes.com/local/x1644187404/Hahira-Honey-Bee-Festival-attracts-swarms-of-people>.

<sup>13</sup> See, e.g., Alisha George, *Beekeeping Class Gets Rare Experience at Hashawha Apiary*, CARROLL CNTY. TIMES (Md.) (May 8, 2011), [http://www.carrollcountytimes.com/news/local/beekeeping-class-gets-rare-experience-at-hashawha-apiary/article\\_bd4ca60a-7915-11e0-b632-001cc4c002e0.html](http://www.carrollcountytimes.com/news/local/beekeeping-class-gets-rare-experience-at-hashawha-apiary/article_bd4ca60a-7915-11e0-b632-001cc4c002e0.html); *Beekeeping Class Offered at MSU*, BOZEMAN DAILY CHRON. (Mont.) (Feb. 12, 2011), [http://www.bozemandailychronicle.com/news/article\\_d2ca5368-366b-11e0-bd5d-001cc4c002e0.html](http://www.bozemandailychronicle.com/news/article_d2ca5368-366b-11e0-bd5d-001cc4c002e0.html); Larissa Graham, *Beginning Beekeeping Class Today at Farmers Market*, LUFKIN DAILY NEWS (Tex.) (Apr. 16, 2010), [http://lufkindailynews.com/news/local/article\\_37d6656e-49da-11d1-fae8b-001cc4c03286.html](http://lufkindailynews.com/news/local/article_37d6656e-49da-11d1-fae8b-001cc4c03286.html); Cindy Hval, *Beekeeping Class Has Young, Old Abuzz*, SPOKESMAN-REV. (Wash.) (May 19, 2011), <http://www.spokesman.com/stories/2011/may/19/beekeeping-class-has-young-old-abuzz>.

strategies for addressing beekeeping activities through local laws and ordinances.

## I. FEDERAL BEEKEEPING AND HONEY REGULATIONS

Unlike many other agricultural products, there are relatively few federal restrictions on the production and sale of honey.<sup>14</sup> The U.S. Department of Agriculture (USDA) has the authority to restrict the importation of honeybees and certain honeybee products into or through the United States to protect the beekeeping and honey industries from the introduction and spread of diseases, parasites, and undesirable genetic traits.<sup>15</sup> The USDA also has oversight authority over the National Honey Board, a non-regulatory federal board that conducts research, marketing, and promotional programs.<sup>16</sup> In addition, the USDA considers pollinator protection a high-priority area for their research grants.<sup>17</sup>

The USDA and the Food and Drug Administration (FDA) share oversight of honey manufacturing and labeling.<sup>18</sup> Packaged honey bearing any official USDA mark or grade on its label must identify its country of origin.<sup>19</sup> Honey labels must also comply with the FDA's requirements for nutrition and ingredients labeling.<sup>20</sup> The FDA prohibits adulteration and misbranding of honey products,<sup>21</sup> although there is

<sup>14</sup> See National Honey Board, *Honey Industry Resources*, HONEY.COM, <http://www.honey.com/nhb/industry> (last visited Dec. 19, 2011); *Regulated Organism and Soil Permits: Honey Bees and Other Bees*, USDA ANIMAL & PLANT HEALTH INSPECTION SERV., [http://www.aphis.usda.gov/plant\\_health/permits/organism/bees/index.shtml](http://www.aphis.usda.gov/plant_health/permits/organism/bees/index.shtml) (last modified Oct. 29, 2010).

<sup>15</sup> 7 U.S.C. §§ 281–286 (2006); 7 C.F.R. §§ 322.1–.35 (2011); USDA ANIMAL & PLANT HEALTH INSPECTION SERV., *supra* note 14.

<sup>16</sup> 7 U.S.C. §§ 4601–4613 (2010); National Honey Board, *supra* note 14.

<sup>17</sup> HACKETT ET AL., *supra* note 8.

<sup>18</sup> 7 U.S.C.A. § 1622(h)(6) (West 2010); National Honey Board, *supra* note 14.

<sup>19</sup> 7 U.S.C.A. § 1622(h)(6). Voluntary grade standards are issued under the Agricultural Marketing Act of 1946. U.S. DEP'T OF AGRIC., U.S. STANDARDS FOR GRADES OF EXTRACTED HONEY, at i (1985) available at <http://www.ams.usda.gov/AMSv1.0/getfile?dDocName=STELDEV3011895>.

<sup>20</sup> 21 U.S.C.A. § 343-1 (West 1999 & Supp. 2011); 21 C.F.R. §§ 101.1–.9 (2011); National Honey Board, *supra* note 14.

<sup>21</sup> 21 U.S.C. § 342 (2006); 21 U.S.C.A. § 343 (West 1999 & Supp. 2011) (defining adulteration and misbranding). Honey products found to be adulterated or misbranded are subject to seizure by the FDA, and violations are punishable by up to one year in prison and/or a fine of up to \$1000 with increased penalties for subsequent convictions. 21 U.S.C.A. §§ 333–334 (West 1999 & Supp. 2011). See *United States v. "Cal's Tupelo Blossom U.S. Fancy Pure Honey,"* 344 F.2d 288, 289 (6th Cir. 1965) (holding that a booklet and leaflet constituted misbranding of honey because they portrayed honey as a drug and a panacea for various diseases and ailments); *United States v. 24 Bottles "Sterling Vinegar & Honey, etc.,"* 338 F.2d 157, 159 (2d Cir. 1964) (holding that two books prescribing vinegar and honey for a variety of ailments and a product containing honey and vinegar did not

currently no national purity standard for honey.<sup>22</sup> Additionally, the FDA has authority to regulate food production facilities and transportation operations to ensure that they use sanitary handling practices.<sup>23</sup> Pursuant to the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, the FDA requires facilities that manufacture, process, or hold honey products to register their facilities, maintain records, and give prior notice of imported shipments.<sup>24</sup> This Act, however, exempts farms and restaurants from these registration and record-keeping requirements.<sup>25</sup>

## II. STATE BEEKEEPING AND HONEY REGULATIONS

Given the limited scope of federal honey regulations, individual states have broad authority to control beekeeping and honey production activities. In most states, apiaries are subject to registration and inspection requirements intended to prevent the spread of bee diseases and parasites.<sup>26</sup> These regulations usually include procedures for con-

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constitute misbranding because the honey product itself did not have any misleading labeling and there was no evidence that the books were intended to accompany the honey product); *United States v. An Article of Food, etc.*, 550 F. Supp. 15, 18 (W.D. Okla. 1982) (finding a product labeled as "pure raw honey" was misbranded because it fell within the standard for "table syrup" but failed to disclose optional ingredients on the label).

<sup>22</sup> See Dan Eggen, *Feeling the Sting of Chinese 'Honey Launderers'*, WASH. POST, July 1, 2010, at A13.

<sup>23</sup> 21 U.S.C. § 350e (2006); 21 C.F.R. §§ 110.3–.93 (2011).

<sup>24</sup> 21 U.S.C.A. § 350c (West 1999 & Supp. 2001).

<sup>25</sup> See generally FDA, *Food Facility Registration: Questions and Answers* (Oct. 2003), <http://www.masterbeekeeper.org/pdf/qanda.pdf>; NATIONAL HONEY BOARD, KEEPING FOOD SAFE: HOW THE NEW BIOTERRORISM REGULATIONS MAY IMPACT YOUR HONEY BUSINESS (2003), available at <http://www.masterbeekeeper.org/pdf/bioterror.pdf>.

<sup>26</sup> E.g., ARK. CODE ANN. §§ 2-22-101 to -112 (2008); CAL. FOOD & AGRIC. CODE §§ 29000–29321 (West 2001); FLA. STAT. ANN. §§ 586.01–.165 (West 2003); GA. CODE ANN. §§ 2-14-40 to -47 (2000); IDAHO CODE ANN. § 22-2501 to -2540 (2009); KY. REV. STAT. ANN. §§ 252.170–.990 (LexisNexis 1994); MD. CODE ANN., AGRIC. §§ 5-501 to -507 (West 2007); MO. ANN. STAT. §§ 264.011–.101 (West 1993); MONT. CODE ANN. §§ 80-6-101 to -112 (2011); NEB. REV. STAT. ANN. §§ 81-2,165 to -2,180 (LexisNexis 2005); N.H. REV. STAT. ANN. §§ 429:1–:28 (2002); N.Y. AGRIC. & MKTS. LAW §§ 173–175-d (McKinney 2004); N.C. GEN. STAT. ANN. §§ 106-634 to -644 (West 2009); N.D. CENT. CODE §§ 4-12.2-01 to -25 (2008); R.I. GEN. LAWS §§ 4-12-1 to -17 (1998); S.C. CODE ANN. §§ 46-37-10 to -50 (1987); TENN. CODE ANN. §§ 44-15-101 to -123 (2007); TEX. AGRIC. CODE ANN. §§ 131.001–.121 (West 2004); WASH. REV. CODE ANN. §§ 15.60.005–.905 (West 2004); WYO. STAT. ANN. §§ 11-7-130 to -407 (2011); see MD. DEP'T OF AGRIC., APPLICATION FOR REGISTRATION OF HONEY BEE COLONIES, available at <http://www.mda.state.md.us/pdf/bee-apl.pdf>; N.J. DEP'T OF AGRIC., APIARY REGISTRATION FORM, available at <http://www.nj.gov/agriculture/divisions/pi/pdf/ApiaryRegistrationForm.pdf>.

ducting inspections,<sup>27</sup> requirements for moving bees into and out of the state,<sup>28</sup> and provisions relating to quarantines, the seizure of infected or noncompliant hives, and the destruction of diseased bees and contaminated equipment.<sup>29</sup> Other bee regulations include requirements for apiary siting<sup>30</sup> and identification,<sup>31</sup> as well as specific provisions for nuisance apiaries<sup>32</sup> and abandoned apiaries.<sup>33</sup> In a few states, hobbyist apiaries are exempt from general bee regulations.<sup>34</sup>

A bee-inspection law was held to be a valid police power regulation in *Graham v. Kingwell*, decided by the Supreme Court of California in 1933.<sup>35</sup> As the court explained:

[T]he act . . . was enacted "to promote the agricultural interests" of the state and "to prevent the introduction and spread of [bee] disease." Examination of its provisions indicates that they reasonably tend to the accomplishment of this purpose. In order to prevent the transmission of bee diseases from one location to another, provision is made in section 6 of the act for inspection of apiaries by the county inspector, for notice to the owner to eradicate disease, if found, and for the eradi-

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<sup>27</sup> *E.g.*, CAL. FOOD & AGRIC. CODE § 29201; IDAHO CODE ANN. § 22-2503; KY. REV. STAT. ANN. § 252.240; MD. CODE ANN., AGRIC. § 5-502; MO. ANN. STAT. § 264.041; MONT. CODE ANN. § 80-6-201; NEB. REV. STAT. ANN. §§ 81-2,167, -2,173.

<sup>28</sup> *E.g.*, CAL. FOOD & AGRIC. CODE §§ 29120-29128, 29140-29145; MD. CODE ANN., AGRIC. § 5-505; MO. ANN. STAT. §§ 264.061-.063; MONT. CODE ANN. § 80-6-202 to -203; TEX. AGRIC. CODE ANN. §§ 131.041-.045. Some states also regulate the intrastate movement of apiaries. CAL. FOOD & AGRIC. CODE § 29070; MONT. CODE ANN. § 80-6-103.

<sup>29</sup> *E.g.*, CAL. FOOD & AGRIC. CODE §§ 29071-29074, 29110-29114, 29150-29157, 29170-29174; IDAHO CODE ANN. § 22-2504; KY. REV. STAT. ANN. §§ 252.190, 252.200; MD. CODE ANN., AGRIC. § 5-504; MO. ANN. STAT. §§ 264.051, 264.065; MONT. CODE ANN. §§ 80-6-104, -201; NEB. REV. STAT. ANN. § 81-2,170; TEX. AGRIC. CODE ANN. §§ 131.021-.025.

<sup>30</sup> *E.g.*, MONT. CODE ANN. § 80-6-111 (requiring general apiaries to be at least three miles apart); *id.* § 80-6-112 (requiring the applicant for a pollination apiary site to own, lease, or rent the property and requiring the property to be used for commercial crop farming); WYO. STAT. ANN. § 11-7-206 (requiring most apiaries to be at least two miles apart); *see* North Dakota v. Knoefler, 325 N.W.2d 192, 194, 201 (N.D. 1982) (upholding defendant's conviction for maintaining an apiary within two miles of another apiary, as prohibited by statute).

<sup>31</sup> *E.g.*, CAL. FOOD & AGRIC. CODE § 29046; MD. CODE ANN., AGRIC. § 5-507; TEX. AGRIC. CODE ANN. § 131.061.

<sup>32</sup> *E.g.*, CAL. FOOD & AGRIC. CODE §§ 29046, 29177, 29204; NEB. REV. STAT. ANN. § 81-2,169.

<sup>33</sup> *E.g.*, MD. CODE ANN., AGRIC. § 5-507; MONT. CODE ANN. § 80-6-104; NEB. REV. STAT. ANN. § 81-2,171.

<sup>34</sup> *E.g.*, IDAHO CODE ANN. § 22-2510 (exempting hobbyist beekeepers from registration requirements); MONT. CODE ANN. § 80-6-114 (exempting hobbyist apiaries from registration requirements and limiting them to five hives).

<sup>35</sup> 24 P.2d 488, 488-89 (Cal. 1933).

cation of American foulbrood by burning. This same section also declares all diseased apiaries to be public nuisances, makes provision for their abatement by the county inspector in the event the owner, after notice, fails to abate them, reserving to the owner a right to appeal the field inspector's diagnosis. These and other provisions of the act reasonably tend to promote the bee industry by lessening, if not precluding, the transmission of bee diseases, thereby adding to the welfare and prosperity of the state.<sup>36</sup>

Restrictions on the importation of bees and bee products were similarly upheld under the state police power in *Wyant v. Figy*, a Michigan case decided in 1954.<sup>37</sup> In *Trescott v. Conner*, a Florida beekeeper who transported his hives to New York each summer challenged a Florida beekeeping law that required him to receive a certificate of health before returning to the state.<sup>38</sup> The beekeeper argued that the provision limiting such certifications to thirty days was invalid because it did not give him sufficient time to transport his bees between the two states.<sup>39</sup> The court noted that other beekeepers were able to comply with the provision, and concluded that "the thirty-day requirement is a reasonable one serving the purpose of detecting the possible presence of infection of bees before they are brought into Florida."<sup>40</sup>

While inspection laws may be generally valid, apiary inspections conducted randomly and without a warrant may run afoul of the Fourth Amendment.<sup>41</sup> This issue was raised in a challenge to Ohio's apiary inspection statute in *Allinder v. Ohio*.<sup>42</sup> The U.S. Court Appeals for the Sixth Circuit held that the provision for random, nonconsensual, and warrantless inspections violated apiary owners' Fourth Amendment rights and did not fall within the administrative search exception.<sup>43</sup> Missouri's beekeeping law also requires bee inspectors to have probable cause that an apiary is diseased prior to conducting an

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<sup>36</sup> *Id.* (alteration in original) (citation omitted).

<sup>37</sup> 66 N.W.2d 240, 243-44 (Mich. 1954).

<sup>38</sup> 390 F. Supp. 765, 765 (N.D. Fla. 1975).

<sup>39</sup> *Id.* at 767.

<sup>40</sup> *Id.*

<sup>41</sup> See *Allinder v. Ohio*, 808 F.2d 1180, 1188 (6th Cir. 1987).

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*



inspection.<sup>44</sup> Nevertheless, most states permit apiary inspections at any time and without a warrant.<sup>45</sup>

States have also attempted to address potential sources of conflict between apiary owners and neighboring crop growers. Apiary owners can sustain significant damages if pesticides are applied to fields where their bees are foraging,<sup>46</sup> but bees can also cause damage to farmers if they are permitted to pollinate seedless crops.<sup>47</sup> Regulatory provisions addressing these conflicts focus primarily on preventive notification systems and rules for apportioning liability.<sup>48</sup>

The production, packaging, transportation, labeling, and sale of honey are also heavily regulated in many states.<sup>49</sup> California's honey production regulations, for example, include the establishment of grade and sampling standards to ensure uniformity among honey products,<sup>50</sup> provisions authorizing the inspection of any facility where honey is produced, stored, transported, or sold,<sup>51</sup> and the seizure of any noncompliant honey.<sup>52</sup> Labeling standards also prohibit products called "imitation honey,"<sup>53</sup> as well as adulteration, mislabeling, the use

<sup>44</sup> MO. ANN. STAT. § 264.041 (West 1993).

<sup>45</sup> *Allinder*, 808 F.2d at 1182 n.3.

<sup>46</sup> *See, e.g.*, *Hall v. C & A Navarra Ranch, Inc.*, 101 Cal. Rptr. 249, 251 (Ct. App. 1972) (holding that the beekeeper may be able to recover damages, even though he failed to comply with the notification requirement when he moved his bees, because the pesticide applicator had actual knowledge of the bees' location); *Lenk v. Spezia*, 213 P.2d 47, 53 (Cal. Dist. Ct. App. 1949) (holding that the beekeeper was not entitled to damages because he was notified prior to the pesticide's application); *Brown v. Sioux City*, 49 N.W.2d 853, 858–59 (Iowa 1951) (holding the city liable for damage to bees caused by pesticide application at municipal airport); *Anderson v. Dep't of Natural Res.*, 693 N.W.2d 181, 187 (Minn. 2005) (finding that the beekeeper was entitled to damages because even if the bees were trespassers, a duty arose on the property owner's behalf if he had actual knowledge or notice of foraging bees).

<sup>47</sup> *See* Craig Kallsen, *Beekeepers, Mandarin Growers at Odds*, W. FARM PRESS, May 5, 2007, at 16, available at <http://westernfarmpress.com/beekeepers-mandarin-growers-odds>.

<sup>48</sup> *E.g.*, ARIZ. REV. STAT. ANN. § 3-367.02 (2002); CAL. FOOD & AGRIC. CODE §§ 29047–29048, 29080–29082, 29100–29103 (West 2001); IDAHO CODE ANN. § 22-2811 (2009).

<sup>49</sup> *See* ALA. CODE §§ 2-11-120 to -123 (1999); HAW. REV. STAT. § 147-1 (2008); MASS. GEN. LAWS ch. 128 § 36B (LexisNexis 2003); MINN. STAT. ANN. § 31.74 (West 2009); MISS. CODE ANN. § 75-29-601 (1990); N.Y. AGRIC. & MKTS. §§ 205–206 (McKinney 2004); N.D. CENT. CODE §§ 19-06.1-01 to -04 (2008); OHIO REV. CODE ANN. § 3715.38 (West 2006); OKLA. STAT. ANN. tit. 78 §§ 82–84 (West 2001); 31 PA. STAT. ANN. § 381–382 (West 1997); TEX. AGRIC. CODE ANN. §§ 131.081–.084, 131.123 (West 2004); WASH. REV. CODE ANN. §§ 69.28.050–.070 (West 2007); W. VA. CODE ANN. § 19-2D-2 (LexisNexis 2007); WYO. STAT. ANN. §§ 11-8-101 to -102 (2011).

<sup>50</sup> CAL. FOOD & AGRIC. CODE § 29443.

<sup>51</sup> *Id.* § 29445.

<sup>52</sup> *Id.* § 29447.

<sup>53</sup> *Id.* § 29451.

of misleading label statements, and the use of inappropriate containers.<sup>54</sup> Specific standards and labeling requirements are provided for comb honey, crystallized honey, and extracted honey.<sup>55</sup> Labels also have to comply with place of origin and floral flavor requirements.<sup>56</sup>

Beyond honey regulations, general agricultural regulations may also impact beekeepers and honey producers. Right to farm laws, for example, often apply to apicultural operations.<sup>57</sup> Such statutes protect apiaries from liability in cases where neighbors came to the nuisance.<sup>58</sup> However, not all states consider agriculture to include beekeeping. For example, Michigan's Right to Farm Act was raised in a case that involved the establishment of an apiary on property that had been used for crop farming prior to its inclusion in a residential district.<sup>59</sup> Although the defendants claimed that beekeeping was an agricultural use permitted based on the property's preexisting farm use, the court disagreed, finding instead that an apiary was an unlawful extension of the nonconforming farm and therefore constituted a nuisance *per se*.<sup>60</sup> The court also rejected the defendants' claim that the apiary was protected by Michigan's Right to Farm Act because the apiary was established after the enactment of restrictive zoning regulations.<sup>61</sup>

### III. NUISANCE LAW AND BEES

Bees can create a nuisance if they become aggressive or swarm on neighboring property, but they have not typically been considered a *per se* nuisance.<sup>62</sup> Rather, courts addressing whether hives constitute a nuisance look to injuries resulting from the hive owner's negligence, and the hives' interference with neighbors' enjoyment of their property.<sup>63</sup> In

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<sup>54</sup> *Id.* §§ 29472, 29671–29674, 29677.

<sup>55</sup> *Id.* §§ 29581–29620.

<sup>56</sup> CAL. FOOD & AGRIC. CODE §§ 29641–29644.

<sup>57</sup> *See, e.g.*, ALASKA STAT. § 09.45.235 (2010); CAL. CIV. CODE § 3482.5 (West 1997); MD. CODE ANN., CTS. & JUD. PROC. § 5-403 (LexisNexis 2006); WASH. REV. CODE ANN. § 7.48.310 (West 2007).

<sup>58</sup> *See, e.g.*, ALASKA STAT. § 09.45.235; CAL. CIV. CODE § 3482.5; MD. CODE ANN., CTS. & JUD. PROC. § 5-403; WASH. REV. CODE ANN. § 7.48.310.

<sup>59</sup> *Jerome Twp. v. Melchi*, 457 N.W.2d 52, 54–55 (Mich. Ct. App. 1990).

<sup>60</sup> *Id.* at 54.

<sup>61</sup> *Id.* at 55.

<sup>62</sup> *See, e.g.*, *City of Arkadelphia v. Clark*, 11 S.W. 957, 958 (Ark. 1889); *Redford Twp. v. McGregor*, 238 N.W.2d 183, 185 (Mich. Ct. App. 1975); *Whitemarsh Twp. v. Cummings*, 7 Pa. D. & C.2d 557, 559–60 (Pa. Com. Pl. 1957).

<sup>63</sup> *See, e.g.*, *Arkadelphia*, 11 S.W. at 958 (“Neither the keeping, owning, nor raising of bees is in itself a nuisance. Bees may become a nuisance in a city, but whether they are so or not is a question to be judicially determined in each case.”); *Ferreira v. D’Asaro*, 152 So. 2d 736,

a New York case, for example, a county court determined that while keeping honeybees was generally permissible, the owner still had a "duty of maintaining them in such a manner that they will not annoy, injure or endanger the comfort, repose, health or safety of any considerable number of persons or to render a considerable number of persons insecure in the use of their property . . . ."<sup>64</sup> In a Pennsylvania case, a township claimed that a resident's bees constituted a public nuisance based on neighbors' complaints about brown spots found on laundry that had been hung out to dry.<sup>65</sup> The spots were caused by deposits of the bees' fecal matter and were only produced during the bees' first flight of the spring—when they left the hive heavy with wastes built up over the winter months.<sup>66</sup> The court ruled, based on these facts, that the brown spots were not a frequent enough annoyance to create a nuisance.<sup>67</sup>

Conversely, an Ohio court concluded that a defendants' beekeeping and honey business constituted a nuisance based on largely undisputed evidence that after the plaintiffs purchased adjacent land, their property was "invaded by an inordinate number of bees . . . which collect[ed] around their doors and windows, in the grass, and near the farm pond, stinging the plaintiffs and their guests on many occasions . . . ."<sup>68</sup> Although the defendants argued that liability should be precluded because the plaintiffs came to the nuisance, the court concluded that when the plaintiffs bought their property there was no in-

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738 (Fla. Dist. Ct. App. 1963) (holding that keeping bees in a manner that seriously interfered with the rights of adjoining landowners constituted a nuisance); *Wooten v. Towle*, 531 N.E.2d 132, 133 (Ill. App. Ct. 1988) (holding that a state law deeming certain invasive and harmful species to be nuisances did not render a residential property owner guilty of maintaining a nuisance merely based on the presence of a beehive or hornet nest); *Redford Twp.*, 238 N.W.2d at 185 ("It was error for the trial judge to take judicial notice that the raising of bees with their propensities towards roaming and stinging was a nuisance. The question still remains as to whether the bees or yellow jackets on the neighbor's property in the spring time constituted a nuisance."); *Olmsted v. Rich*, 6 N.Y.S. 826, 830 (Gen. Term 1889) (The court found a nuisance where "[a] large quantity of bees were kept upon a small village lot next to plaintiff's lot and dwelling. At certain seasons the plaintiff in the use of his lot and dwelling was . . . very seriously discommoded, and the comfortable enjoyment of the property greatly impaired."); *Tshudy v. McCutcheon*, 23 Pa. D. & C. 460, 461 (Pa. Com. Pl. 1935) (holding a neighbor liable for destroying the owner's bees, which had left their hive and settled on a tree in the neighbor's yard, because the neighbor had not allowed the owner to retrieve the swarm and had no right to destroy the bees absent evidence showing that they constituted a nuisance).

<sup>64</sup> *People v. McOmber*, 206 Misc. 465, 469 (N.Y. Spec. Term 1954).

<sup>65</sup> *Whitemarsh Twp.*, 7 Pa. D. & C.2d at 559–60.

<sup>66</sup> *Id.* at 560.

<sup>67</sup> *Id.* at 560–61.

<sup>68</sup> *Riffle v. Moore*, No. 14-79-9, 1980 Ohio App. LEXIS 10788, at \*2 (Ohio Ct. App. June 10, 1980).

dication that the premises were subject to any nuisance caused by the bees.<sup>69</sup> Rather, it was only after the plaintiffs purchased their land that the defendants increased the scale of their beekeeping operation, and so it could not be said that the plaintiffs should have foreseen the injuries that would be caused by the defendants' bees.<sup>70</sup>

The location of beehives in relation to adjoining properties is often relevant to the question of nuisance liability. In *Allman v. Rexer*, a Pennsylvania court found that "[i]t is negligence to locate the hives so near a place where persons or animals may be expected to be as to make it appear likely that the bees will be angered by their presence and attack them."<sup>71</sup> Similarly, a Florida court held that a property owner could be found negligent for maintaining beehives so close to neighboring properties as to create a foreseeable risk of injury from bee stings.<sup>72</sup> However, the Supreme Court of Texas held that the owner of property where beehives are kept has no duty to warn guests about the risks of allergic reactions to bee stings when they are aware of the presence of bees, as the risk of injury to the guests in such a case is obvious.<sup>73</sup>

The ownership of nuisance bees is also a relevant consideration. For example, in a Pennsylvania case the plaintiffs alleged that the defendant's bees had stung them on their own property.<sup>74</sup> But the court found that the plaintiffs failed to prove liability, as there were other hives kept in the surrounding area, and "no attempt whatsoever was made to trace the flight of the particular bee or bees involved."<sup>75</sup>

#### IV. LOCAL BEEKEEPING REGULATIONS

Local governments must be mindful of federal and state regulations in drafting their own bee ordinances, as certain provisions could be subject to preemption. Georgia, for example, expressly precludes a variety of local apiculture regulations:

No county, municipal corporation, consolidated government, or other political subdivision of this state shall adopt or continue in effect any ordinance, rule, regulation, or resolu-

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<sup>69</sup> *Id.* at \*3–4.

<sup>70</sup> *Id.*

<sup>71</sup> 21 Pa. D. & C. 431, 434 (Pa. Com. Pl. 1934).

<sup>72</sup> See *Ferreira*, 152 So. at 737; see also *Ammons v. Kellogg*, 102 So. 562, 563 (Miss. 1925) (holding that the property "owner is under a reasonable duty to place bees so they will not come in contact with persons traveling roads and similar places").

<sup>73</sup> See *Wilhelm v. Flores*, 195 S.W.3d 96, 98 (Tex. 2006).

<sup>74</sup> *Holden v. Lewis*, 56 Pa. D. & C. 639, 639–40 (Pa. Com. Pl. 1946).

<sup>75</sup> *Id.* at 644.

tion prohibiting, impeding, or restricting the establishment or maintenance of honeybees in hives. This Code section shall not be construed to restrict the zoning authority of county or municipal governments.<sup>76</sup>

Agricultural use preemption statutes in some states may also apply to bees and apicultural facilities, as in Illinois, where counties may not ordinarily “impose regulations, eliminate uses, buildings, or structures, or require permits with respect to land used for agricultural purposes, which includes . . . apiculture . . . .”<sup>77</sup> Similarly, local governments in New York are prohibited from unreasonably restricting agricultural activities in certified agricultural districts,<sup>78</sup> and apiaries are specified as falling within this protection.<sup>79</sup>

Where not subject to preemption, apiaries and related land uses will be subject to generally applicable zoning requirements. Beekeeping, for example, is usually defined as an agricultural use and may be prohibited in residential areas,<sup>80</sup> and apiaries will be subject to requirements for nonconforming uses<sup>81</sup> and accessory structures.<sup>82</sup> Some local governments have enacted ordinances specifically pertaining to beekeeping. The following sections discuss common features of these local bee laws.

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<sup>76</sup> GA. CODE ANN. § 2-14-41.1 (2000).

<sup>77</sup> 55 ILL. COMP. STAT. ANN. § 5/5-12001 (West 2011). This exemption only applies to parcels of land consisting of five or more acres, or those that sell at least \$1000 in agricultural products. *Id.*

<sup>78</sup> N.Y. AGRIC. & MKTS. § 305-a (McKinney 2004).

<sup>79</sup> *Id.* § 301 (McKinney 2004 & Supp. 2011).

<sup>80</sup> *E.g., Ex parte Ellis*, 81 P.2d 911, 912 (Cal. 1938) (“There is sufficient recognition in the decided cases that bees may become a nuisance in residential areas . . . [and] the facts appearing herein justify the ordinance prohibiting beekeeping within the city except in the designated areas, and that the ordinance is not unconstitutional for any reason.”); *People v. Kasold*, 314 P.2d 241, 242 (Cal. Ct. App. 1957) (upholding an ordinance that prohibited beekeeping in residential districts but allowed the activity in other districts subject to restrictions on the density of beehives, because bees were not domesticated animals, and the ordinance was intended to serve the valid police power purpose of protecting people and animals from injuries).

<sup>81</sup> *See, e.g., Jerome Twp. v. Melchi*, 457 N.W.2d 52, 54 (Mich. Ct. App. 1990) (holding that an apiary was an unlawful extension of a nonconforming agricultural operation located in a residential district).

<sup>82</sup> *See, e.g., Gilman v. Kent Cnty. Dep’t of Planning*, No. C.A. 99A-05-001 HDR, 2000 WL 305341, at \*3–4 (Del. Super. Ct. Jan. 28, 2000) (reversing a denial of a variance for an accessory structure to store the property owners’ beekeeping equipment because the adjudicating body applied the wrong legal standard and failed to make specific findings of fact for judicial review).

### A. Classification of Bees

Before backyard beekeeping can be permitted, some cities may need to amend their ordinances to clarify that bees are not prohibited wild animals. Last spring, for example, New York City lifted its ban on beekeeping through an amendment to its Health Code that expressly removed non-aggressive honey bees from the list of prohibited “venomous insects.”<sup>83</sup> Similarly, Denver bans the keeping of “wild or dangerous animals,” but specifically states that domesticated honey bees do not fall within the prohibition.<sup>84</sup> In Littleton, Colorado, beekeeping was recently designated an allowable activity in “park [and] open space” districts.<sup>85</sup>

### B. Lot Size and Colony Density

One of the most common issues addressed in beekeeping ordinances is the number of hives that owners can keep on their property.<sup>86</sup> Minimum lot sizes for beekeeping and colony density regulations help to ensure that urban and suburban apiaries do not grow so large as to create a nuisance.<sup>87</sup> Limiting the number of hives within urban areas may also be important in order to prevent bee populations from outgrowing the supply of available foraging sites.<sup>88</sup>

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<sup>83</sup> RULES OF N.Y.C., tit. 24, § 161.01(b)(12) (2010), [http://24.97.137.100/nyc/RCNY/Title24\\_161\\_01.asp](http://24.97.137.100/nyc/RCNY/Title24_161_01.asp); see Sarah Gilbert, *Sweet Victory: New York City Legalizes Beekeeping*, DAILY FINANCE (Mar. 17, 2010, 9:53 AM), <http://www.dailyfinance.com/story/sweet-victory-new-york-city-legalizes-beekeeping/19402004>. Previously, illegally-kept hives were subject to fines of up to \$2000. Kristina Shevory, *The Beekeeper Next Door*, N.Y. TIMES, Dec. 9, 2010, at D1.

<sup>84</sup> DENVER, COLO., MUN. CODE § 8-2(c) (2011), <http://library.municode.com/index.aspx?clientId=10257&stateId=6&stateName=Colorado>.

<sup>85</sup> LITTLETON, COLO., CITY CODE § 10-2-24 (2011), [http://www.sterlingcodifiers.com/codebook/index.php?book\\_id=504](http://www.sterlingcodifiers.com/codebook/index.php?book_id=504).

<sup>86</sup> See, e.g., *id.* § 10-4-14(h); PITTSBURGH, PA., ZONING CODE tit. 9, art. 5, §§ 911.04.A.2(b)(3), 912.07.B (2010), [http://www.pittsburghpa.gov/dcp/files/urbanagriculture/City\\_of\\_Pittsburgh\\_Urban\\_Agriculture\\_Zoning.pdf](http://www.pittsburghpa.gov/dcp/files/urbanagriculture/City_of_Pittsburgh_Urban_Agriculture_Zoning.pdf); SALT LAKE CITY, UTAH, CODE §§ 8.04.010, 8.10.010-.100 (2011), <http://www.slccgov.com/government/code>.

<sup>87</sup> See BEEKEEPERS ASSOC. OF SW. FLA., MODEL BEEKEEPING ORDINANCE FOR FLA. (LOCAL AND MUN.) GOV'TS 1, 3, available at <http://swfbees.com/beekeepModelOrdinance.pdf>; LA. STATE UNIV., AGRIC. CTR., MODEL BEEKEEPING ORDINANCE FOR LA. LOCAL & MUN. GOV'TS 1, 3, available at <http://www.lsuagcenter.com/NR/rdonlyres/CB2656D7-A2EA-4E6D-8DC3-A88E889E763E/61882/pub2524modelbeekeepingAug09LOWRES.pdf> (proposing a model regulation on behalf of four other beekeeping-related organizations).

<sup>88</sup> See Sami Grover, *When Will Urban Honey Bees Run Out of Food?*, TREEHUGGER.COM (Aug. 3, 2011), <http://www.treehugger.com/files/2011/08/urban-honey-bees-food-forage.php>.

Beekeeping is permitted in “all or most zoning districts” in Dayton, Ohio,<sup>89</sup> but the city requires a lot size of at least 7500 square feet for the first hive and an additional 5000 square feet for each additional hive.<sup>90</sup> Fort Collins, Colorado, has implemented a similar plan, basing the number of permitted hives on the acreage of the property.<sup>91</sup> Under the regulations, two colonies can be kept on a tract of land that is less than a quarter of an acre.<sup>92</sup> If the parcel is between a quarter and a half-acre, a beekeeper can have up to four colonies.<sup>93</sup> The next size range covers lots ranging from a half to a full acre, and permits up to six colonies on the property.<sup>94</sup> Eight colonies are permitted on any property larger than an acre, but the ordinance includes an exception for additional colonies when they are set back at least two hundred feet from all property lines.<sup>95</sup>

### C. Setbacks

Setbacks, like minimum lot size requirements, are commonly used to decrease the potential nuisance effect of beekeeping operations.<sup>96</sup> Setbacks applying to beekeeping activities vary widely in their length and scope. In Dayton, for example, beehives are required to be at least ten feet from any lot line, ten feet from any dwelling, and at least thirty feet from any public sidewalk or roadway.<sup>97</sup> Additionally, Dayton requires the hive’s entrance to face “away from the property line of the residential lot closest to the beehive.”<sup>98</sup> Larger setbacks are imposed in other cities, as in Tuscaloosa, Alabama, where it is illegal to keep bees

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<sup>89</sup> Press Release, Dayton City Commission, Zoning Updates Boost Urban Agriculture, (Nov. 2010), *available at* <http://www.cityofdayton.org/PressReleases/publications/Dayton%20Extra/Dayton%20Extra%20November%202010.pdf>.

<sup>90</sup> DAYTON, OHIO, ZONING CODE § 150.420.1 (A) (1) (2009), <http://www.cityofdayton.org/departments/pcd/planning/Documents/ZoningCode.pdf>.

<sup>91</sup> FORT COLLINS, COLO., MUN. CODE § 4-233(a) (1987), <http://www.colocode.com/ftcollins/municipal/chapter4.htm#artIIIdiv2> (last updated March 8, 2009).

<sup>92</sup> *Id.* § 4-233(a) (1).

<sup>93</sup> *Id.* § 4-233(a) (2).

<sup>94</sup> *Id.* § 4-233(a) (3).

<sup>95</sup> *Id.* § 4-233(a) (4)–(5).

<sup>96</sup> *See, e.g.*, LITTLETON, COLO., CITY CODE § 10-4-14(c) (2011), [http://www.sterlingcodifiers.com/codebook/index.php?book\\_id=504&ft=4&find=10-1](http://www.sterlingcodifiers.com/codebook/index.php?book_id=504&ft=4&find=10-1); PITTSBURGH, PA., ZONING CODE tit. 9, art. 5, §§ 911.04.A.2(b) (4), 912.07.B(10) (1998), <http://library.muni.co.gov/index.aspx?clientId=13525&stateId=38&stateName=Pennsylvania> (amended through Feb. 14, 2011); SALT LAKE CITY, UTAH, CODE § 8.10.050 (2011), <http://www.slc.gov.com/government/code>.

<sup>97</sup> DAYTON, OHIO, ZONING CODE § 150.420.1(A) (2) (2009), <http://www.cityofdayton.org/departments/pcd/planning/Documents/ZoningCode.pdf>.

<sup>98</sup> *Id.*

within one hundred fifty feet of any school, public park, or playground, or within three hundred feet of any residential property line.<sup>99</sup> San Diego requires that beehives must be located at least one hundred feet from any public roadway.<sup>100</sup>

#### D. Flyway Barriers

Some ordinances require beekeepers to install a “flyway barrier,” which is usually a solid fence, wall, or dense line of hedges.<sup>101</sup> These structures raise the flight path of bees leaving the hive, thereby limiting their interactions with nearby residents.<sup>102</sup> Fort Collins requires six-foot tall flyway barriers spanning ten feet along the property line in both directions, unless the adjoining property is undeveloped for at least twenty-five feet past the property line.<sup>103</sup> Dayton requires that if a hive is within ten feet of a rear or side property line, six-foot fencing must be constructed and must extend at least twenty feet on either side of the hive.<sup>104</sup> The requirement will be waived, however, if the hive is placed on a porch or balcony that is at least ten feet off the ground and at least ten feet from the property line.<sup>105</sup>

#### E. Access to Water

It is important for beekeepers to provide water for their bees so that they do not congregate at swimming pools, pet water bowls, bird-baths, and other water sources on neighboring properties.<sup>106</sup> Requirements to this effect have been enacted in New York City<sup>107</sup> and Dayton,

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<sup>99</sup> TUSCALOOSA, ALA., CODE § 4-11 (2011), <http://library.municode.com/index.aspx?clientId=10302&stateId=1&stateName=Alabama>.

<sup>100</sup> SAN DIEGO, CAL., MUN. CODE § 44.0409 (2000), <http://docs.sandiego.gov/municode/MuniCodeChapter04/Ch04Art04Division04.pdf>.

<sup>101</sup> See, e.g., LITTLETON, COLO., CITY CODE § 10-4-14(d); PITTSBURGH, PA., ZONING CODE §§ 911.04.A.2(b) (6), 912.07.B(12).

<sup>102</sup> MARY CHRISTINA WOOD ET AL., REFORM OF LOCAL LAND USE LAWS TO ALLOW MICRO-LIVESTOCK ON URBAN HOMESTEADS 41 (2010), available at <http://enr.uoregon.edu/news/docs/microlivestock.pdf>.

<sup>103</sup> FORT COLLINS, COLO., MUN. CODE § 4-229 (1987), <http://www.colocode.com/ftcollins/municipal/chapter4.htm#artIIIdiv2> (last updated Mar. 8, 2009).

<sup>104</sup> DAYTON, OHIO, ZONING CODE § 150.420.1(A) (3) (2009), <http://www.cityofdayton.org/departments/pcd/planning/Documents/ZoningCode.pdf>.

<sup>105</sup> *Id.*

<sup>106</sup> See James E. Tew, *The Drought and Your Bees*, ALA. BEELINE, (Ala. A&M and Auburn Univ.), Summer 2007, at 1–2, available at <http://www.aces.edu/pubs/docs/B/beeline/BEELINE0001/BEELINE0001.pdf>.

<sup>107</sup> RULES OF N.Y.C., tit. 24, § 161.01(b) (12) (2010), [http://24.97.137.100/nyc/RCNY/Title24\\_161\\_01.asp?zoom\\_highlight=bees](http://24.97.137.100/nyc/RCNY/Title24_161_01.asp?zoom_highlight=bees).



Ohio.<sup>108</sup> Beekeeping associations in many other municipalities have proposed similar requirements.<sup>109</sup> While some ordinances include only a general requirement, San Diego's bee ordinance specifies that the water source must be within ten feet of the apiary.<sup>110</sup>

### F. *Permits and Registration Requirements*

Some bee ordinances include registration requirements. In New York City, for example, beekeepers must provide information regarding the number and location of their hives in order to obtain registration from the New York City Department of Health.<sup>111</sup> Local registration requirements might raise preemption issues, however, as many states have enacted comprehensive apiary registration laws.<sup>112</sup>

### G. *Apiary Identification Signs*

In San Diego, beekeepers must erect a sign "prominently displayed on the entrance side of the apiary stating, in black letters not less than one inch in height on a background of contrasting color, the name of the owner or person in possession of the apiary, his address, and telephone number."<sup>113</sup> Fort Collins also requires that apiary owners "conspicuously post" signs with their name and contact information.<sup>114</sup> Other cities have enacted similar requirements.<sup>115</sup>

<sup>108</sup> DAYTON, OHIO, ZONING CODE § 150.420.1(A) (4).

<sup>109</sup> See, e.g., FORT COLLINS, COLO., MUN. CODE § 4-230; LITTLETON, COLORADO, CITY CODE § 10-4-14(e) (1987), [http://www.sterlingcodifiers.com/codebook/index.php?book\\_id=504](http://www.sterlingcodifiers.com/codebook/index.php?book_id=504) (last updated Mar. 8 2009)&ft=4&find=10-; SALT LAKE CITY, UTAH, CODE § 8.10.060 (2011), <http://www.slccgov.com/government/code>; BEEKEEPERS ASSOC. OF SW. FLA., MODEL BEEKEEPING ORDINANCE FOR FLA. (LOCAL AND MUN.) GOV'TS, AT 1, 3, available at <http://swfbees.com/beekeepModelOrdinance.pdf>; LA. STATE UNIV., AGRIC. CTR., MODEL BEEKEEPING ORDINANCE FOR LA. LOCAL & MUN. GOV'TS, AT 1, 3, available at <http://www.lsuagcenter.com/NR/rdonlyres/CB2656D7-A2EA-4E6D-8DC3-A88E889E763E/61882/pub2524modelbeekeepingAug09LOWRES.pdf>.

<sup>110</sup> SAN DIEGO, CAL., MUN. CODE § 44.0416 (2000), <http://docs.sandiego.gov/municode/MuniCodeChapter04/Ch04Art04Division04.pdf>.

<sup>111</sup> *New York City Beekeeper Notification Form*, N.Y.C. DEP'T OF HEALTH & MENTAL HYGIENE, <http://www.nyc.gov/html/doh/downloads/pdf/chs/chs-beekeeping-guideline.pdf> (last updated June 22, 2011).

<sup>112</sup> See *supra* note 26 and accompanying text.

<sup>113</sup> SAN DIEGO, CAL., MUN. CODE § 44.0411.

<sup>114</sup> FORT COLLINS, COLO., MUN. CODE § 4-234.

<sup>115</sup> See, e.g., SALT LAKE CITY, UTAH, CODE § 8.10.050(D) (2011), <http://www.slccgov.com/government/code>.

### H. Fire Safety Regulations

When harvesting honey, beekeepers typically fill the hives with smoke to subdue the bees.<sup>116</sup> Cities may impose restrictions on smokers because they create an obvious fire hazard.<sup>117</sup> San Diego, for example, requires the apiary controller to maintain a firebreak at least thirty feet wide in all directions around the apiary.<sup>118</sup> Within this firebreak, the first ten feet from the apiary must be kept free of combustible material and any vegetation must be six inches or shorter.<sup>119</sup> Vegetation up to a foot tall is permitted in the remaining twenty feet.<sup>120</sup> San Diego also requires the apiary controller to maintain basic fire-fighting materials, such as shovels, fire extinguishers, and hoses.<sup>121</sup> Additionally, the bee smoker must be completely extinguished by water prior to transportation, or it must be placed in a securely fastened metal container.<sup>122</sup>

### CONCLUSION

Designing effective beekeeping ordinances requires local governments to address concerns about nuisances, but they must also be aware of beekeepers' complaints that local regulations are too strict and that state laws, general zoning requirements, and nuisance liability are sufficient to ensure the safe and sanitary operation of beehives.<sup>123</sup> When the proper balance is struck between these competing interests, beekeeping ordinances can become an important part of a city's urban agriculture regulations.

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<sup>116</sup> Janina Muszynska & Michal Rybak, *Attempt to Use Sounds in Commercial Beekeeping*, 46 J. APICULTURAL SCI. 67, 68 (2002).

<sup>117</sup> *Id.*

<sup>118</sup> SAN DIEGO, CAL., MUN. CODE § 44.0413(a).

<sup>119</sup> *Id.*

<sup>120</sup> *Id.* § 44.0413(b).

<sup>121</sup> *Id.* § 44.0414(a)–(b).

<sup>122</sup> *Id.* § 44.0415(b)–(d).

<sup>123</sup> See, e.g., Ikimulisa Livingston, *Mind Your Own Bees-Ness, NYC!*, N.Y. POST, July 16, 2011 at 7; Mario Moretto, *Keepers Bee-Moan South Portland Ordinance*, FORECASTER (Maine) (June 29, 2011), <http://www.theforecaster.net/content/s-south-portland-beekeeping-ordinance-070111>.

